**Hughes Aircraft Company *and* American Federation of Guards Local Number 1, Petitioner.** Cases 31–RC–6942, 31–RC–6944, and 31–RC–6950

July 30, 1992

ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

The Petitioner's request for review of the Acting Regional Director's Decision and Order is denied as it fails to raise substantial issues warranting review. A copy of the Acting Regional Director's decision is attached.

We agree with the Acting Regional Director's conclusion that the petition should be dismissed because of the Employer's imminent cessation of its guard operations through subcontracting and because of the speculativeness of the Petitioner's contention that the two subcontractors (Burns and Pinkerton) will become joint employers with the Employer. In any event, under its joint employer contention, the Petitioner seeks, in effect, multiemployer bargaining units, which the Board will not sanction without a showing that the Employers have expressly consented to joint negotiations or that they have by an established course of conduct unequivocally manifested an intent to allow group collective bargaining to bind them. *Greenhoot, Inc*., 205 NLRB 250, 251 (1973). As the Acting Regional Director noted, the Petitioner did not serve the subcontractors; thus neither is a party to this proceeding, and neither, so far as appears, has expressed its consent to multiemployer bargaining in the single unit sought. The Employer clearly does not consent to such an arrangement. See *Lee Hospital*, 300 NLRB 947 (1990). For this additional reason, we affirm the Acting Regional Director's dismissal of the petitions.

APPENDIX

DECISION AND ORDER

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, which petitions were duly consolidated for hearing by order of the Acting Regional Director, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer[1] is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[2]

3. The labor organization involved claims to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the following reasons:

The Petitioner seeks an election in three separate bargaining units (as amended at the hearing) consisting of all full-time and regular part-time uniformed plant protection officers and security receptionists employed by the Employer exclusively or as a joint employer with others, at its El Segundo North, El Segundo South, and Long Beach, California, facilities, excluding all other employees and supervisors as defined in the Act. The Employer contends that the petitions should be dismissed on the basis that it will no longer employ any employees in the petitioned-for units after August 16, 1992, since commencing on that date it will subcontract out all uniformed plant protection officer work and security receptionist work.

The evidence reflects that in or around August 1991, the Employer's corporate security department was advised by management that restructuring of operations would take place, and that security was one of the departments which was under mandate to achieve a 30 per cent reduction in operating costs from its 1990 levels. The cost reduction was viewed as a consequence of cutbacks in defense spending and increased market competition. In October 1991, the security department met to formulate concrete plans to achieve this objective. Contracting out the plant protection services was considered at this meeting as a means to achieve the mandated 30 per cent reduction. On or about February 21, 1992, managers of the security department decided that the uniformed plant protection and security receptionist functions should be contracted out at its facilities which are the subject of these petitions, and at some of its other facilities located at Canoga Park, Manhattan Beach, Van Nuys Airport, Torrance, Rancho Santa Margarita, Culver City and Westchester.

The record reflects that in late February or early March of 1992, the Employer sent detailed questionnaires to 17 guard companies, 7 of which were subsequently sent requests for proposals. Based on responses to the requests for proposals, the companies under consideration were reduced to 4. The Employer met in person with the companies in April 1992, to discuss specifications.

During this period, the Employer informed its plant protection employees of ongoing events. For example, on November 26, 1991, February 26, 1992, and April 24, 1992, the Employer circulated statements to said employees advising them of ongoing restructuring efforts and the possibility of contracting for outside services in order to effectuate cost re-

[1] The Employer's name appears as amended at the hearing.

[2] The parties stipulated at the hearing that Hughes Aircraft Company is a Delaware corporation engaged in the manufacture of aerospace and related equipment at its facilities in El Segundo and Long Beach, California, and that annually in the course and conduct of its operations the Employer sells and ships goods and materials valued in excess of $50,000 directly to customers located directly outside the State of California and during the past 12 months has received gross revenues in excess of $50,000.

duction. On May 26, 1992, a final decision was made. The Employer advised employees of this fact and that the selection of a company or companies would be made by mid-June 1992.

The evidence reveals that on June 5, 1992, the Employer notified its employees that the transition to the outside contractors would be completed on August 16, 1992, and that accordingly, employees would be subject to layoff between August 3, and August 16, 1992. On June 9, 1992, the Employer met with the ''finalists'' of the contractors, advising them that their bids were due June 18, 1992, at 3:00 p.m., and that an award of the bid would be made within 24 hours after that time.

The evidence further revealed that June 19, 1992, the Employer signed agreements with two outside contractors to provide the uniformed plant protection services.[3] The subcontractors have agreed to a 30 to 45-day conversion period.

The Board has consistently held that it will not conduct an election at a time when a permanent layoff is imminent and certain. In *Larson Plywood Company*, 223 NLRB 1161 (1976), the Board decided that a corporate resolution to sell the company assets within 90 days constituted an imminent and certain decision. In this case, it is clear that the Employer's decision to subcontract has methodically been carried forward and has achieved certainty in the execution of letters of intent with subcontractors. The imminence of the decision is likewise manifest. Employees have received notice of permanent layoff effective between August 3 to 16, 1992, a period of less than two months from the date of the hearing in this case.

The Petitioner argues that once the subcontractors take over their responsibilities, there may be a joint employer relationship between the Employer and the subcontractors. Since this event will not occur until mid-August, however, it is too speculative at this point to make any determinations. Mreover, the subcontractors were not parties to these proceedings and it is clearly premature to make any determinations as urged by the Petitioner.

Based on the foregoing and the record as a whole, in light of the imminence and certainty of the Employer's decision to permanently lay off employees in the petitioned-for units, I have decided to dismiss the petitions herein. *Concourse Village*, 276 NLRB 12 (1985); *Martin Marietta Aluminum Inc*., 214 NLRB 646 (1974); *M.B. Kahn Construction Co*., 210 NLRB 1050 (1974).

Accordingly, IT IS HEREBY ORDERED that the petitions filed herein be, and they are, dismissed. Inasmuch as I have decided to dismiss the petition, I find it unnecessary to decide the other issues raised by the petition.

[3] The Hearing Officer left the record open for receipt of two additional Employer exhibits, the signed agreements with the two subcontractors, which were received as Employer's exhibits 11 and 12. Additionally, the Employer submitted a third exhibit, its written notification to employees of the decision. Since the record was left open only for the receipt of the two aforementioned agreements, I shall reject the third, marked for identification as Employer's exhibit 13, and place it in the rejected exhibit file.